Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Resolution 1564 (2007)[1]

Prosecution of offences falling within the jurisdiction of the International Criminal Tribunal for the former Yugoslavia (ICTY)

Parliamentary Assembly

1. More than ten years have elapsed since the conflicts in the territory of the former Yugoslavia; however all those responsible for war crimes have not yet been brought to justice. No matter how long and painful the reconciliation process may be, many efforts are still required.

2. The Parliamentary Assembly wishes to point out from the outset that justice is an indispensable ingredient in the process of reconciliation for the victims, communities and countries concerned and that it is essential to resolutely fight impunity, which is unacceptable.

3. Responsibility must be borne not by whole peoples or communities, but by individuals found guilty after a fair trial.

4. The Assembly stresses the importance of the International Criminal Tribunal for the former Yugoslavia (hereinafter "the tribunal" or "the ICTY") which, in seeking justice, has played and continues to play a fundamental, pioneering role in the development of international criminal law.

5. The Assembly regrets the consequences of the death of Slobodan Milosevic before the end of his trial. Although his indictment was a historic event, since he was the first serving head of state to be brought before an international jurisdiction, his possible conviction, as much historical as symbolic, will not take place, thus depriving thousands of victims of justice.

6. The Assembly reminds the national authorities of the states concerned of their obligation, under international law, to co-operate fully and effectively with the tribunal.

7. The Assembly welcomes the fact that this co-operation has improved considerably in some cases, particularly with regard to technical aspects. Nevertheless, it regrets that the authorities of some states or entities concerned show a blatant lack of political will, to the point of undermining the real efforts made by the judiciary in these countries.

8. This is particularly obvious with regard to the prosecution and arrest of the fugitives against whom the tribunal has brought charges: eleven years after their indictment for genocide, Radovan Karadžić and Ratko Mladić, to name only the best known examples, are still at large. The fact that they have not been brought to justice is an insult to the memory of the victims and to the expectations of the survivors of this conflict.

9. The Assembly calls on the authorities concerned to do their utmost to ensure full and complete co-operation with the tribunal, and in particular urges the Serbian authorities and the authorities of the Republika Srpska to do everything in their power to locate and arrest the fugitives and show that no one is above the law.

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1. Assembly debate on 28 June 2007 (25th Sitting) (see Doc. 11281, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Lloyd). Text adopted by the Assembly on 28 June 2007(25th Sitting).

10. The Assembly welcomes the arrests and the transfers of Zdravko Tolimir and Vlastimir Djordjevic to The Hague Tribunal and notes that this positive step has enabled the European Union to resume negotiations. In this context, however, the Assembly continues to invite the European Union to maintain its demands regarding Serbian co-operation with the ICTY as a precondition for the signing of a stabilisation and association agreement.

11. The Assembly is aware that the tribunal's mandate will soon expire and that it has devised a strategy for completing its activities, the success of which depends on the support and commitment of the states involved in putting an end to impunity. The Assembly is concerned by the fact that some fugitives might still be at large when the tribunal finally closes its doors.

12. The Assembly encourages the United Nations to continue to do everything in its power to combat impunity for war crimes and to find a solution to ensure that war criminals still at large do not escape international justice, irrespective of the date on which they are arrested. Considering the ICTY's long-term (and moral) commitment towards its own witnesses, a residual mechanism, with a view to continuing to maintain witness protection when its mandate ends, should also be established.

13. The Assembly takes note of the length and complexity of the proceedings before the tribunal and therefore urges the ICTY to invest additional efforts to maximise the effectiveness of the proceedings.

14. The Assembly acknowledges that it is now more than four years since Vojislav Šešelj made a voluntary appearance in front of the tribunal; since that time he has been kept in confinement and his trial has not yet been started. Consequently the Assembly calls on the tribunal to set a date for the commencement of his trial.

15. The Assembly believes that the time has come for the national courts of the states concerned to take over from the tribunal and prosecute those responsible for war crimes who have not yet been brought to justice (with the exception of the six fugitives who have already been indicted by the tribunal and will have to appear before international jurisdictions).

16. The Assembly is pleased to note that progress has been made in strengthening the judicial systems of these states; at the same time, it urges the political authorities of the states concerned to do their utmost to guarantee the impartiality and fairness of current and future war crimes trials and to ensure that courts never base their decisions on ethnic considerations.

17. The Assembly welcomes the significant monitoring activity of war crimes trials within national jurisdictions carried out by the Organization for Security and Co-operation in Europe (OSCE) and strongly encourages the OSCE to continue this important task.

18. Moreover, the Assembly is particularly concerned to note that the national legislation of the states in question has proven to be a real obstacle to the effective prosecution in their own national courts of war crimes suspects, thereby providing a basis for impunity, which can no longer be tolerated.

19. It is obvious that the ban on the extradition of nationals in all the countries concerned constitutes a serious obstacle to the course of justice. The Assembly believes that:

19.1. the non-extradition of nationals should not extend to persons charged with war crimes, once there are guarantees that the accused will receive a fair trial. The Assembly is convinced that, in the interests of justice, the states concerned must redress this situation;

19.2. in this context, misuse of the acquisition of dual nationality[2] raises concern because it allows some of those charged with war crimes to escape justice in a given country by acquiring the nationality of a neighbouring country and thereby benefiting from the ban on the extradition of nationals.

20. Despite the real technical progress made with the support of the OSCE within the framework of the "Palić Process", which concerns interstate judicial co-operation at regional level, and the signing of agreements between the Croatian prosecutor's office and its counterparts in Serbia and in Montenegro, the Assembly regrets that, owing to the ban on the extradition of nationals, a large number of judgments are still handed down in absentia and strongly encourages the states in the region to continue their efforts to improve judicial co-operation in order to reduce the number of trials of this type.

2. 2. The term "nationality" does not refer to ethnic affiliation but to the nationals of a state.

21. The Assembly therefore calls on:

21.1. the relevant authorities of the states concerned to:

21.1.1. immediately lift the ban on the extradition of nationals charged with committing war crimes;

21.1.2. carefully examine applications for nationality and not grant it to anyone indicted for a war crime in another country;

21.1.3. take positive, informative measures to encourage debate on war crimes with a view to ensuring broader acceptance by the public of the judicial proceedings against those responsible;

21.1.4. remove the restrictive rule which prevents prosecution files being transferred to another country when the legally enforceable term of imprisonment exceeds ten years;

21.1.5. step up their efforts to ensure better judicial co-operation so as to reduce the number of judgments handed down in absentia;

21.1.6. improve co-operation and the transfer of information between the police services of their countries in investigations concerning war criminals by means of effective bilateral agreements;

21.1.7. increase the resources allocated to judicial institutions, not only with regard to investigations but also in terms of funding and staff;

21.1.8. urge the courts to be as objective as possible, thus guaranteeing the impartiality of war crimes trials and ensure that judges, prosecutors and lawyers working in local courts are given appropriate training;

21.1.9. improve the working conditions for and quality of the defence so as to ensure a fair trial;

21.1.10. ensure the best co-ordination possible between all the players involved in the judicial process in prosecuting war crimes, including police forces;

21.1.11. improve the protection of witnesses at national level and co-ordination at regional level and clarify the legal safeguards;

21.2. the authorities of Bosnia and Herzegovina to:

21.2.1. ensure the harmonisation of case law, consider setting up a national supreme court, or grant the powers of a supreme court to an existing court so as to secure legal certainty;

21.2.2. encourage the signing of agreements between Bosnia and Herzegovina’s public prosecutor’s office and its counterparts in the region, along the lines of those signed by the public prosecutors’ offices of Croatia, of Serbia and of Montenegro.